

A WOMAN'S RIGHT TO CHOOSE HANGS IN THE BALANCE

By Nick Gier (Jan. 20, 2006)

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During his confirmation hearings many Americans were relieved to hear that John Roberts believes that the Constitution contains a right to privacy. He also considers *Roe vs. Wade* to be “settled law.” In recent hearings to replace Sandra Day O’Connor on the Supreme Court, Samuel Alito agreed with Roberts on the first point but not on the second.

O’Connor is the author of the significant proviso “no undue burden,” which limits the state’s power to restrict a woman’s right to choose. In one decision O’Connor ruled that it was indeed an “undue burden” that a woman must get her husband’s permission to have an abortion. In a dissent in the Third District Court of Appeals Judge Alito argued that any state has a right to require a woman to do just that.

A right of privacy is not specifically granted in the Constitution, but it is strongly implied therein. Americans have an inalienable right to hold their own beliefs, to act according to the dictates of their own consciences, and the “right . . . to be secure in their persons, houses, papers, and effects. . .” (Fourth Amendment). The right of privacy follows from the basic American belief that people are autonomous beings, which means that they have a right to determine their own lives without government interference.

During the Alito hearings there was grandstanding from both sides of the aisle, but the worst offender was Senator Tom Coburn of Oklahoma. Coburn repeatedly said that facts about the fetus should compel the Supreme Court to overturn *Roe vs. Wade*. To bolster his argument Coburn added he had delivered 4,000 babies in his career as an obstetrician.

I’ve taught over 6,000 students and I hope that they have better reasoning skills than the good senator. Coburn stated that the early fetus has brain waves and a heart beat, but animal fetuses have these as well. What makes humans morally and legally different from animals is that they are persons, not just biological entities. Our moral, religious, and legal tradition has held that persons are rational beings, who are able to determine their own lives significantly different from the ways they guide their children or control their animals. Several footnotes to *Roe vs. Wade* reference this long tradition, and I believe that the justices had sufficient reason to rule that the early fetus is not a person.

At the beginning of the third trimester, the fetal brain undergoes explosive brain development. At 25 weeks the brain cells are very poorly connected and the neocortex, the center of higher brain function, is undeveloped. At 33 weeks those same cells have thousands of connections and the neocortex has the six layers of the mature brain. The

fetal brain at 33 weeks is significantly different from most animal brains, which can form the physical basis for protecting the legal rights of a “beginning person,” a being with a serious moral right to life but not the duties of an adult person.

This argument is far superior to fetal viability, a criterion that, as Senator Coburn pointed out, is vulnerable to technological advances in preserving the lives of premature fetuses. Fetal brain development will not change except for major and immoral genetic engineering. A critic might say that this focus on brain power would make those with mental deficiencies non-persons. Even though the average IQ for microcephalics is 10, they still have a mental life greater than the late term fetus. Those with Down Syndrome have an average IQ of 50, but their problems are due to brain metabolism not the amount of neo-cortex they have. Many of these people are conscientious employees and some of them get married, taking on the duties of full fledged adults.

My argument gives expectant mothers the same six months’ freedom from state interference but with a stronger legal foundation. There is also a nice logical symmetry between starting a person's life at this point and then legally ending it when the brain no longer functions. It’s also imperative to note that 88 percent of all American abortions occur within 13 weeks of conception, long before any major elements of a person's life develop. Only 1.4 percent of all abortions occur after 20 weeks.

Many claim that abortions cause health problems for women who choose them. A 2003 study done by the National Cancer Institute found that there was no connection between abortion and the incidence of breast cancer. In 1989 the American Psychological Association published a study that concluded that there was no such thing as “post-abortion syndrome.” Nada Stotland, former president of the Association of Women Psychiatrists, states that “the incidence of diagnosed psychiatric illness and hospitalization is considerably lower following abortion than following childbirth.”

Abortion opponents do very little to support the social services and accurate information that would make abortions safer, earlier, and rarer, as is the case in most other industrialized countries. For example, in Belgium and the Netherlands there are 7 abortions per 1,000 women in 1995 as opposed to 23 per 1,000 in the U.S. Our legislators also do very little to improve the socio-economic conditions that would allow single mothers to raise their babies successfully. A recent survey demonstrated that anti-abortion states lag far behind others in supporting foster care, education, welfare, and the child adoption.

The most horrendous effects on female health are found in countries that do not allow reproductive freedom, and the Bush administration’s restrictions on family planning in foreign aid are making this problem worse. With a little over half the population, Brazilian women have more abortions than American women do. In those countries where abortion is illegal there were an average 35 abortions per 1,000 women in 1995.

There are also examples of irresponsible reproductive freedom. Current and former Communist states encouraged abortion rather than contraception and effective sex

education. In the 1995 there were 78 abortions per 1,000 in Cuba and 90 per 1,000 in Eastern Europe. Except for these countries, the rate of abortion appears to be directly proportional to the restrictions placed on sex education and reproductive freedom.

Roe vs. Wade turned 33 on January 22, and we should heed the results of a recent Harris Poll: 70 percent said that they would oppose Alito if he intends to overturn this landmark decision. The choice for America is clear. We can continue to protect a woman's right to determine her own life, or we can deny her this right and force her to face unhealthy and sometimes deadly alternatives to safe, legal abortions.

Nick Gier taught religion and philosophy at the University of Idaho for 31 years. For more on the topic see www.class.uidaho.edu/ngier/abortion.htm.